THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.9943 OF 2006

Dated: 28th September, 2006.

Between :

Smt. Vallabhaneni Kanakadurga Lakshmi Prasunamba … Petitioner

And

1. State Bank of India, Nuzvid, Krishna District, Rep. by its Branch Manager, and Another. .. Respondents.

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ORDER :

This writ petition is filed seeking a declaration that the action of the respondents in taking recourse to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act, 2002) having submitted themselves to the jurisdiction of Civil Court by filing suit in O.S.No.150 of 2003 on the file of the Senior Civil Judge, Nuzvid as arbitrary and illegal.

The petitioner states that he availed housing loan from the 1st respondent Bank on 24-11-1997 by creating equitable mortgage on a house and also some other agricultural lands. It appears that on account of default committed by the petitioner, the 1st respondent Bank filed O.S.No.150 of 2003 on the file of the Court of Senior Civil Judge, Nuzvid for recovery of Rs.4,83,885/- in which a preliminary decree was passed on 21-1-2006. Aggrieved by the same, the petitioner preferred an appeal before the II-Addl. District Judge, Vijayawada which is pending.

While so, the respondent proposed to conduct sale of Item No.1 of the suit schedule property on 16-3-2006 invoking the provisions of the Securitisation Act. Aggrieved by the said action, this writ petition is filed with the above prayer.

It is to be noted that an identical question has been considered by this Court in W.P.No.2769 of 2006 which was disposed of by this Court today rejecting similar contentions raised by the petitioner therein.

In the light of the ratio laid down in the above case holding that the doctrine of election is not applicable and it is not mandatory for the Bank to obtain permission to withdraw the proceedings on the file of the Tribunal, the declaration as sought by the petitioner cannot be granted.

Admittedly, in the case on hand, notice under Section 13 (2) of the Securitisation Act was issued on 8-2-2003, whereas O.S.No.150 of 2003 was filed much later on 31-12-2003.

Accordingly, the Writ Petition is dismissed. No costs. However, this shall not preclude the petitioner to work out the remedy of appeal as available under Section 17 of the Securitisation Act, if so advised.

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G. ROHINI, J.

Dt.28–09-2006

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